

Why Focus on Young Children?

Permanency and Attachment

Early Intervention and
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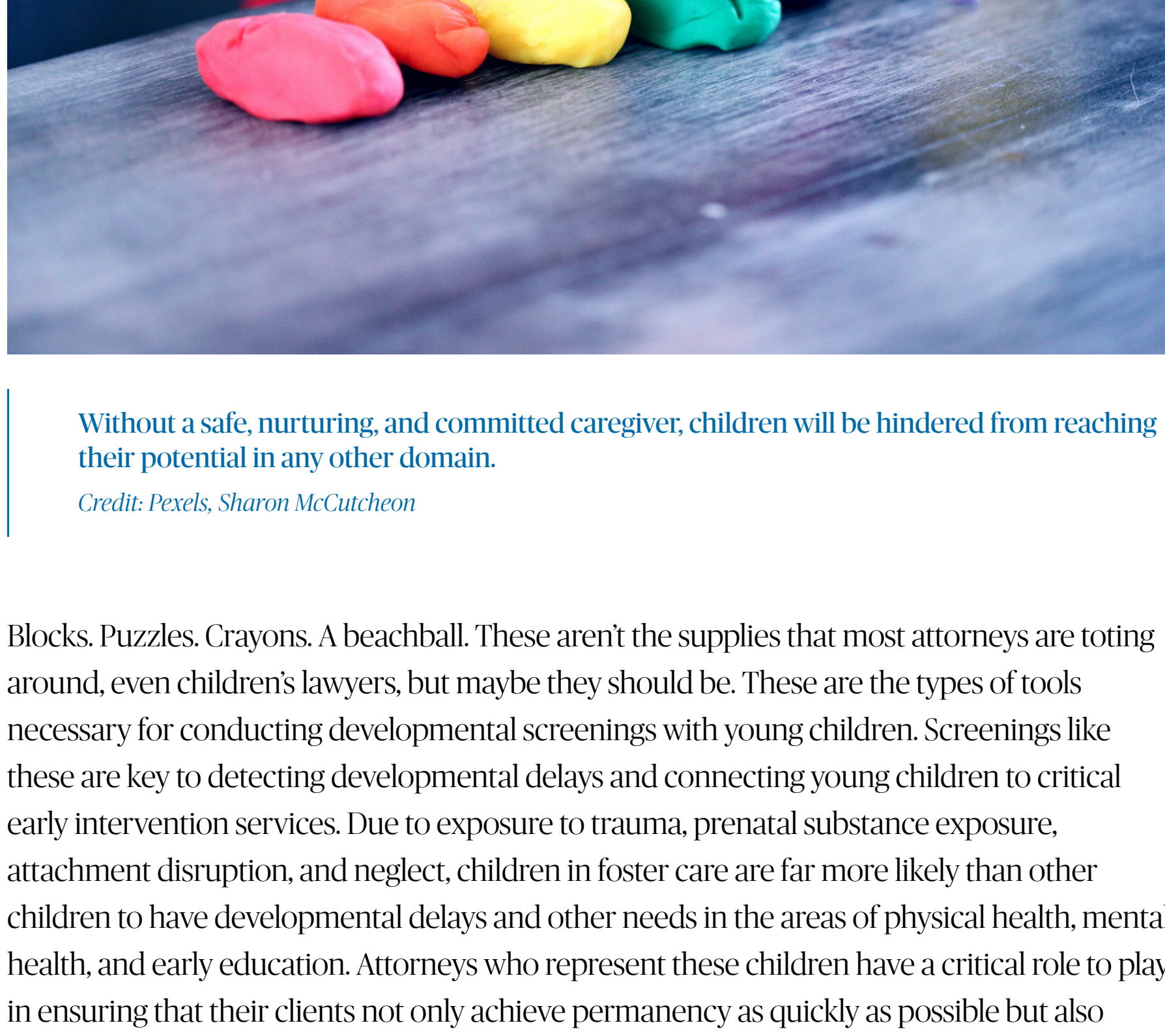
The Strong Beginnings Model

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Legal Representation for the Youngest Clients: A Holistic Approach

Attorneys who represent young children have a critical role to play in ensuring that their clients not only achieve permanency as quickly as possible but also receive the specialized services they need to get the best start on their way to a bright future.

By Tori Porell

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Without a safe, nurturing, and committed caregiver, children will be hindered from reaching their potential in any other domain.

Credit: Perels, Sharon McCutcheon

Blocks. Puzzles. Crayons. A beachball. These aren't the supplies that most attorneys are toting around, even children's lawyers, but maybe they should be. These are the types of tools necessary for conducting developmental screenings with young children. Screenings like these are key to detecting developmental delays and connecting young children to critical early intervention services. Due to exposure to trauma, prenatal substance exposure, attachment disruption, and neglect, children in foster care are far more likely than other children to have developmental delays and other needs in the areas of physical health, mental health, and early education. Attorneys who represent these children have a critical role to play in ensuring that their clients not only achieve permanency as quickly as possible but also receive the specialized services they need to get the best start on their way to a bright future.

Why Focus on Young Children?

It is difficult to overstate the importance of a child's first five years of life. Recent studies have shown that a child's brain doubles in size in the child's first year of life, keeps growing to about 80 percent of adult size by age three, and is more than 90 percent developed by age five. Never again are our brains as malleable and flexible as they are during this period, in which they are developing millions of neural connections that will last a lifetime. And while this malleability is designed to enable an incredible amount of learning, it also means that young children are uniquely vulnerable to negative experiences, like abuse and neglect, which can have lifelong consequences for their physical, cognitive, and social-emotional development. The seminal study of adverse childhood experiences (ACEs) gives us a framework for understanding how these experiences can actually aggregate into a condition known as toxic stress, which is associated with everything from risky sexual behavior and incarceration, to leading causes of death such as cancer, diabetes, heart disease, and suicide. However, we now know, ACEs are not destiny. In addition to preventing children from experiencing ACEs, there are a number of interventions that can help build children's resiliency, such as ensuring that they also have PCEs (positive childhood experiences).

Children in this age group are also the largest group entering foster care. In fiscal year 2018, just shy of 50 percent of all children entering foster care were five years old or under, with children under one year old accounting for the largest single age group (19 percent). Students in foster care have abysmal educational outcomes, with research indicating that 83 percent of foster children are held back by the third grade and 75 percent are working below grade level. And to underscore why these statistics about third grade students are such a problem, a widely cited study by Education Week shows that "[a] student who can't read on grade level by 3rd grade is four times less likely to graduate by age 19 than a child who does read proficiently by that time. Add poverty to the mix, and a student is 13 times less likely to graduate on time than his or her proficient, wealthier peer." It is clear from the outcomes we are seeing, and from what we know about brain science, that waiting until kindergarten to intervene is already too late.

Permanency and Attachment

For young children, attachment is everything. Our very earliest learning happens within the context of a relationship with an attentive and attuned caregiver. And these relationships are not just beneficial to our learning—they are critical to our survival. Babies and young children are evolutionarily predisposed to seek out and maintain positive, nurturing relationships with a primary caregiver (or two) in order to survive, as well as to grow and develop. These earliest relationships provide our internal maps for our sense of the world, our place in it, and our future relationships. Whether a child's attachment is to a parent, a foster parent, or a relative is less important than the quality of that relationship because once children are able to form a secure attachment, they are proven to be more resilient and able to continue forming secure attachments. Therefore, when attachment is disrupted during this critical stage, we can expect all sorts of ripple effects, affecting a child's physical health, emotional regulation, language development, and early learning. There are no mental health interventions, developmental therapies, or educational services that can substitute for the need for a committed, loving, and attuned caregiver.

Nearly all children in foster care have experienced at least one attachment disruption, and some have experienced this disruption over and over again. Therefore, the first priority of the child welfare system, and the attorneys who advocate for children within it, must be to reunify children safely with a parent, or maintain them in the care of another substitute attachment figure, as early in their development as possible. There has been some progress in the law to recognize that young children require permanency on a faster timeline than older children, due to their need for attachment and the critical developmental period of early childhood. For example, in California, there are shorter timelines for reunification for children removed from their parents before their third birthday (or a sibling set including a child of this age) than those removed later. However, there are a number of other ways that attorneys must recognize the importance of attachment for young children, beyond what has been enshrined in the law.

The three primary points at which attachment should be a consideration for attorneys are visitation, transitions, and permanency. First, for children removed from the care of their parents, visitation is often the sole vehicle for maintaining or sometimes (especially for children removed at birth) establishing an attachment between parent and child. Young children's sense of time is very different, and brief weekly visitation is unlikely to be sufficient and may be harmful to children under five. While visitation must be an individualized decision, the younger a child is, the more consideration must be given to the frequency and length of visitation that will allow the establishment or maintenance of a healthy parent-child attachment. Second, transitions for young children in foster care, whether between caregivers or between a caregiver and a parent, must be given careful consideration. As a general rule, abrupt transitions in caregivers can be damaging to young children, and multiple placements should be avoided when possible. When a transition is planned, such as the return of a child to a parent after time in out-of-home care, both caregivers should coordinate the transition to provide as much consistency and predictability as possible for the child. Finally, permanency with a committed, attuned parent or caregiver is the single most critical factor for the health, development, and well-being of a young child. The form of permanency (reunification with a parent, adoption, or legal guardianship) is less relevant than the quality of that relationship. What is important is that the caregiver can provide a safe, stable, nurturing relationship and environment for the child to meet the child's basic needs for closeness, support, loyalty, protection, love, importance, and responsiveness to health and developmental needs.

Early Intervention and Preschool Special Education

Given that young children in the child welfare system often face multiple risk factors, such as poverty, abuse, neglect, substance exposure, attachment disruption, and intergenerational trauma, it is unsurprising that these children are more likely than their peers to experience developmental delays. While between 4 percent and 10 percent of children in the general population experience developmental delays, rates of developmental delay among young children in foster care are reported to be as high as 60 percent. The most common type of delay is in language development (experienced by 57 percent of children), followed by 33 percent showing cognitive challenges, 31 percent displaying gross motor difficulties, and 10 percent experiencing difficulty with basic growth. Despite this being a well-documented phenomenon, developmental delays are still frequently undetected in young children in foster care. Especially in light of the fact that children in foster care often lack one consistent caregiver who would be able to note a lack of progression in certain skills or even a regression, it is important that these children receive standardized screenings. Screenings may take the form of a questionnaire like the Ages & Stages Questionnaire (ASQ), a more thorough assessment done by a pediatrician, or simply a discussion with a caregiver about the Centers for Disease Control and Prevention's expected milestones. Attorneys can play a role in ensuring that their young child clients are referred for one of these screenings by a professional, screened by a social worker or case manager, or screened by the attorneys themselves, if trained.

If a child is found to be at high risk for or experiencing a developmental delay, there are two systems that are mandated to intervene and provide the necessary services to address those delays. First, children covered by Medicaid, as a high number of foster youth are, are also covered by Medicaid's Early Periodic Screening, Diagnosis, and Treatment (EPSDT) program, which mandates the early treatment of problems and disorders for all eligible children younger than the age of 21 years. Second, the Individuals with Disabilities Education Act (IDEA) provides services to infants and toddlers (ages birth to three) with developmental delays through Part C and preschoolers (ages three to five) with one of 13 qualifying disabilities in Part B. The exact implementation of IDEA looks different from state to state; however, all states are bound by IDEA's Child Find mandate, which requires all school districts to identify, locate, and evaluate all children (birth to 21 years of age) with disabilities, regardless of the severity of their disabilities. In passing IDEA, Congress also specifically emphasized the importance of early intervention services, noting "an urgent and substantial need" to "enhance the development of infants and toddlers with disabilities; reduce educational costs by minimizing the need for special education through early intervention; minimize the likelihood of institutionalization, and maximize independent living; and, enhance the capacity of families to meet their child's needs."

There are a few key legal rights that attorneys for children should know of—without needing to be special education experts—in order to help their clients expeditiously access all of the services to which they are entitled. First, as a threshold matter, all attorneys should be aware of who holds their clients' educational and developmental rights. While educational rights can often be overlooked for a child who is not yet school-aged, it is critical to have someone available and engaged who can sign consents for developmental and special education assessments. Practice differs from state to state as to whether biological parents retain these rights when their children are removed, whether foster parents or relatives can sign such consents, or when a court may need to appoint a surrogate educational/developmental rights holder for a child. Who holds these rights is less important than ensuring that someone is available to participate in this process on a child's behalf and that the identification of a proper rights holder does not unnecessarily delay access to early intervention services, when time is of the essence.

Second, the IDEA mandates very specific timelines that implementing agencies must meet as a matter of law. For Part C, which serves infants and toddlers (ages birth to three), once a referral is made, a service coordinator is appointed and must complete an evaluation within 45 days. For Part B, serving children past their third birthday, a school district has 15 days, upon receipt of a referral, to generate an assessment plan for the education rights holder's signature. Once the district receives the signed assessment plan, the district has 60 days (with allowances for school vacations) to assess a child, hold an individualized education program (IEP) meeting, and, if the child is eligible, begin services.

Finally, of particular importance for young children are their rights during a transition between Part C services and Part B services. The IDEA mandates that the appropriate implementing agency in the state convene a transition conference for a toddler with a disability who may be eligible for preschool services under Part B of the IDEA, not fewer than 90 days and, at the discretion of all parties, not more than 9 months before the toddler's third birthday. This is a critical juncture at which a child could experience a lapse in critical services; proactive advocacy by attorneys can ensure a smooth transition to preschool for their clients.

Other Factors: Physical Health, Mental Health, and Early Education

While permanency and early intervention/special education are the two areas where young children in foster care have the most legal rights for their attorneys to assert, it is also critical to remember the areas of physical health, mental health, and early education. In a recent longitudinal study of kindergarten readiness, researchers found that there were two areas that most strongly predicted both whether children were ready for kindergarten and whether they would be meeting state standards by the third grade. The first was basic health and well-being (whether students were healthy, well-rested, and well-fed), and the second was their social-emotional skills (specifically self-regulation and social expression). All of the same risk factors for developmental delays listed above, including attachment disruption, are also risk factors for a variety of physical health conditions as well as mental or behavioral health challenges in young children. Young children in foster care should receive all recommended preventive health screenings, as well as ongoing screening for mental or behavioral health needs. In a national sample of child welfare agencies, 94 percent of agencies had policies regarding the assessment of all children entering foster care for physical health problems, yet only 47.8 percent had policies for mental health assessments and only 57.8 percent had inclusive policies for developmental assessments. Attorneys must fill in these gaps and ensure their clients have received appropriate holistic assessments.

Preschool is another critical intervention for young children in foster care. For decades, research has shown that high-quality early educational interventions are associated with long-lasting benefits for all children, with even more pronounced results for socioeconomically disadvantaged children. Foster youth are automatically eligible for, and can receive preferential placement into, many early education programs, such as Head Start or state preschool. However, many foster youth are not able to access preschool programs due to unmet developmental, behavioral, or mental health needs. When these students are not successful in early childhood education or are subject to exclusionary discipline like suspension or expulsion (preschool children are expelled at three times the rate of children in kindergarten), they are more likely to continue to get in trouble at school and, later on, get lower test scores. They even have a higher likelihood of criminal justice involvement, a phenomenon known as the "preschool to prison pipeline." Once again, attorneys for children have an important role to play in ensuring that their clients have access to critical opportunities for early learning, are supported in order to access their early education, and are not subject to discriminatory or exclusionary practices.

The Strong Beginnings Model

The East Bay Children's Law Offices began the Strong Beginnings project in 2018, to systematically address the needs of our youngest clients in foster care in Alameda County. With the support of an Equal Justice Works fellowship, I leveraged my background as an early childhood educator to become the founding attorney of this project. To begin the project, we first conducted an audit of the needs of our zero- to five-year-old clients, to identify areas for advocacy. We discovered, for example, that in the prior year, 32 percent of our zero- to five-year-old clients were identified as having a developmental delay (likely a significant under-identification), yet only 23 percent of those identified were receiving early intervention services. The first change that we made to our practice was to implement a universal screening program for our clients between 1 month and 66 months of age, using the Ages & Stages Questionnaire (ASQ), whenever they were visited by attorneys or social workers from our office. Not only did this dramatically increase our identification of clients with developmental delays and our ability to refer them to early intervention or preschool special education services, it also provided an excellent opportunity to discuss child development with our clients' caregivers. Our office also began consulting regularly with an experienced early childhood mental health clinician, who provides case consultation on difficult issues of permanency, attachment, or mental health treatment. As the Strong Beginnings attorney, I serve as a resource to the office for issues with clients in this population, as well as maintain a caseload of 0- to 5-year-old clients with complex educational, developmental, mental health, or medical needs.

As an example of what child-centered advocacy can look like with a focus on the particular needs of preschool-age children, let's consider Lyla's case. Lyla was three years old when she was removed from the care of her parents due to their substance use and incarceration. Lyla was placed into one foster home and then almost immediately another because her behaviors were so extreme that her first foster parents could not manage them. When I first visited her, at her attorney's request, I had serious concerns. Not only was Lyla very behind on her immunizations and in need of dental work, but she was only speaking in single-word phrases and had no idea how to hold a crayon. In addition, during my very first visit, Lyla was highly affectionate with me and threw a major tantrum as I began to leave, classic signs that she had an insecure or disorganized attachment system. I set to work with the rest of Lyla's team to ensure that she got caught up on medical and dental care, that she was assessed by her school district for special education services, and that her mental health needs were addressed through a placement in a therapeutic nursery school program. After an unsuccessful attempt at reunifying Lyla with her parents, her attorney and I knew that she needed an alternate plan because she had experienced so much attachment disruption. To secure a permanent, quality placement, her attorney fought for a legal guardianship with a relative who is committed to parenting Lyla for the long term and ensuring that she receives all of the specialized services that she needs. Lyla will be starting kindergarten this fall, and she is so excited. She loves school and has all of the supportive services in place she needs to manage her behavior and help her be successful. These services have also helped to stabilize her placement with a relative, who feels supported to manage her challenging behavior.

Perhaps because most cannot speak yet or because their crises are not as dramatic and consequential as those of older youth, young children in foster care are often overlooked in terms of legal advocacy. While children under five are entering foster care at a faster rate than any other age group and constitute a significant proportion of all children in foster care, their particular needs are not always as easy to identify. The greatest need for children in this population, in accordance with their fundamental orientation toward attachment, is permanency. Without a safe, nurturing, and committed caregiver, children will be hindered from reaching their potential in any other domain. Beyond this, young children in foster care face high rates of developmental delays, which need to be identified as early as possible. Once those developmental delays are identified, even young children have very specific legal rights, which can aid their advocates in obtaining early intervention and preschool special education as quickly as possible. Finally, young children need specific monitoring of their mental and physical health, as well as access to high-quality early education, to support their optimal development and healing from early adversity. When we intervene early in the lives of children, to prevent maltreatment, address developmental delays, and support connections with loving caregivers, our impact is magnified throughout the life of that child, and the child has the best opportunity to reach his or her highest potential.

Tori Porell is a second-year Equal Justice Works Fellow, sponsored by the Morrison & Foerster Foundation, at the East Bay Children's Law Offices in Oakland, California.

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